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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/635,889

08/06/2003

Mark Schiebler

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29391

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01/13/2006

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EXAMINER

KING, ANITA M

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/635,889	<b>Applicant(s)</b> SCHIEBLER, MARK	
	<b>Examiner</b> Anita M. King	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 12, 13, 18, 23, 24, 28-32, 34, 36, 42, 43, 54 and 98-109 is/are pending in the application.
- 4a) Of the above claim(s) 2, 12, 13, 18, 23, 24, 28-32, 34, 36, 42, 43 and 54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 99, 100 and 103-109 is/are rejected.
- 7) ☒ Claim(s) 98, 101 and 102 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is the third office action for application number 10/635,889, Multi-Use Linkage Device, filed on August 6, 2003.

### ***Election/Restrictions***

Claims 12, 13, 18, 23, 28-32, 34, 36, 42, 43, and 54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 27, 2005.

### ***Drawings***

The drawings are objected to because the lead line for reference characters "10" in Fig. 1, "12" in Fig. 5, "32" in Fig. 17, "46" in Fig. 21, "245" in Fig. 26, "and 270" in Fig. 31 are incorrect, see MPEP 608.02 in regards to lead lines; and reference character "200" in Fig. 43 does not appear to be referring to a torque screw. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

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sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: on page 28, line 29 delete "301" after "femur" and insert "--301--" after "condyle".

Appropriate correction is required.

### ***Cancellation of Claims***

Claims 3-11, 14-17, 19-22, 25-27, 33, 35, 37-41, 44-53, and 55-97 have been canceled per applicant's request.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 98-109 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 1 clearly indicates that a subcombination is being claimed, e.g., "a linkage device that can be connected with at least one of another linkage device and to itself...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a linkage device," the at least one of another linkage device being only functionally recited. This presents no problem as long as the body of the claim also refers to the at least one another linkage device functionally.

The problem arises when the at least one another linkage device is positively recited within the body of the claim, such as, "a closure hub attached to said first end of said strip and having an opening to receive the second end of another linkage device." There is an inconsistency within the claim; the preamble indicates subcombination, while in at least one instance in the body of the claim there is a positive recital of structure indicating that the combination of a linkage device and another linkage device are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the linkage device or the linkage device in combination with the at least one another linkage device.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the linkage device alone or the combination of the linkage device and the at least one of another linkage device. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination (the linkage device) and

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the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 100, 104, 105, and 109 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,969,613 to Yeager et al., hereinafter, Yeager. Yeager discloses a linkage device comprising a strip (12) having a first end and a second end; a closure hub (11) attached to the first end of the strip and having an opening (50) to receive the second end of the linkage device; a locking mechanism within the closure hub; a connecting surface (80) protruding from the strip and operable to secure the second end within the closure hub; an application distinct tag (37 or 98) connected to the linkage device; wherein information on the application distinct tag (98) is detectable by photon activation; wherein the tag comprises a microchip which stores information; wherein the tag emits a signal which is used to determine a location of the linkage

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device; and wherein the strip is of a length to allow the second end of the strip to connect to the opening in the closure hub.

Claims 1, 103, and 105 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,852,156 to Read. Read discloses a linkage device comprising a strip (30) having a first end and a second end; a closure hub (24) attached to the first end of the strip and having an opening (34) to receive the second end of the linkage device; a locking mechanism (40) within the closure hub; a connecting surface (60) protruding from the strip and operable to secure the second end within the closure hub; an application distinct tag (20) connected to the linkage device; wherein the application distinct tag further comprises electrically conductive material with a known resistance wherein the resistance will change when the linkage device is tampered with; and wherein the distinct tag emits a signal which is used to determine a location of the linkage device.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 99 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yeager in view of U.S. Patent 5,336,209 to Porzilli. Yeager discloses the claimed invention except for the limitation of the device being made from biodegradable material. Porzilli

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teaches a device (10) made from biodegradable material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the device in Yeager to have been made from a biodegradable material as taught by Porzilli for the purpose of environmental safe material.

Claims 106-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeager in view of U.S. Patent 6,938,305 to Garver. Yeager further discloses a signage area. Yeager discloses the claimed invention except for the limitation of the hub having a plurality of openings to receive a plurality of strips. Garver teaches a linkage device comprising a plurality of strips (42) having first and second ends, a closure hub (28) attached to the first ends of the strips and having openings to receive the second ends of the strips, a locking mechanism, and connecting surfaces. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in Yeager to have included a plurality of strips and openings as taught by Garver for the purpose of mounting or attaching a plurality of objects to one linkage device.

#### ***Allowable Subject Matter***

Claims 98, 101, and 102 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,079,540 to Narlow et al.

U.S. Patent 5,088,158 to Burkholder

U.S. Patent 5,337,503 to Goby

U.S. Patent 5,524,463 to Schenkel et al.

U.S. Patent 5,802,888 to Parsons

U.S. Patent 5,864,290 to Toyomi et al.

U.S. Patent 6,219,887 to Parsons

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anita M. King  
Primary Examiner  
Art Unit 3632

January 9, 2006